
ORDER OF THE STATE PERSONNEL BOARD (ON REMAND)

John Rodgers,

Complainant,

v.

Colorado Department of Human Services, Colorado Mental Health Institute at Pueblo,

Respondent.

The State Personnel Board (the "Board") met in public session on July 18, 2000.

During this public session, the Board considered the record on appeal, including but not limited to:

1. The Court of Appeals opinion and order of reversal/remand in *John Rodgers and Colorado State Personnel Board v. Colorado Department of Human Services, Colorado Mental Health Institute at Pueblo*, 98 CA 2094 (December 9, 1999);
2. Respondent's Motion for Order Requiring Complainant to Reimburse Back Pay and Pay while On Leave ("Motion for Back Pay");
3. Complainant's Response to Motion for Back Pay ("Complainant's Response");
4. Respondent's Reply to Complainant's Response ("Reply"); and
5. Complainant's Motion to Strike Reply.

The following order is entered:

I. Background

The Court of Appeals reversed the Board's order on this matter and remanded this matter back to the Board with directions. Specifically, the Court stated: "the order (of the Board) is reversed and the cause is remanded with directions to reinstate complainant's termination." The extent of the directions was to reinstate

CMHIP's decision to terminate Complainant from employment. No directions were provided with regard to back pay and benefits.

During the pending appeal, CMHIP filed a motion with the Board requesting a stay of the Board's order of October 23, 1998 reinstating Complainant and awarding back pay and benefits. The Board declined to grant a stay of its order. Subsequently, CMHIP requested a stay from the Court of Appeals which was also declined.

On December 9, 1999, the Court of Appeals issued its decision. CMHIP then again asked the Court of Appeals for a stay of any reinstatement and award of back pay and benefits during the period between the Court of Appeals decision and the issuance of mandate as prescribed under the Colorado Appellate rules. That stay was in effect granted, in part, on January 7, 2000. The Court of Appeals stated, in part: the balance of [respondent's] motion [for Stay of 12/22/99], seeking affirmative relief, is denied since this court lacks the authority to rule otherwise." Thus, the Court of Appeals ruled that while mandate was pending, the Board's order to reinstate Complainant could be stayed. It failed to specifically address the stay of back pay and benefits. Instead, it ruled it did not have authority to rule on back pay and benefits. CMHIP then placed Complainant on administrative leave with pay until mandate was issued. During this period, CMHIP once again asked the Board for a stay and volunteered to escrow any pay and benefits on behalf of Complainant during the pending mandate. The Board denied the request, interpreting CMHIP's request as procedural so as to allow it to petition the Court of Appeals for additional relief.

Mandate was then issued by the Court of Appeals on May 24, 2000. No additional remedies or appeals were available to Complainant.

CMHIP now requests that the Board order Complainant to repay CMHIP all back pay and benefits awarded to Complainant since Complainant's initial termination. CMHIP lists this amount as \$52, 650.00 and \$16,320.00. CMHIP maintains that the first amount of \$52,650 is for that period of time from the date of Respondent's termination to his reinstatement under the Board's October 23, 1998 Order. CMHIP maintains that the second amount represents Complainant's approximate salary, which he received, between the December 1999 Court of Appeals decision and the date of mandate and during which time he was on administrative leave.

II. Complainant's Motion to Strike

Complainant's Motion to Strike is GRANTED. Respondent's Reply is untimely. The Board rules provide no specific provision for a reply and Respondent's Reply failed to be filed timely pursuant to Board Rule R-1-4, 4 CCR 801 (1999). Board Rule R-1-4 exists, in part, to allow the Board an opportunity to timely review

materials and acts as a mechanism to limit continuous responsive pleadings between parties.

III. Jurisdiction

In reviewing this matter, the Board considered the record and arguments. Based upon the Court of Appeals January 2000 ruling and its refusal to address the matter of back pay and benefits, as well as the Board's statutory authority to award all rights, salaries, and benefits under CRS 24-50-125, the Board maintains it has jurisdiction to rule on this matter.

IV. Respondent's Motion for Back Pay

Respondent's Motion for Back Pay is GRANTED, IN PART. Complainant is directed to reimburse Respondent the amount of \$52,650.00. Based on the Court of Appeals decision, the discipline imposed of termination was not arbitrary, capricious, or contrary to rule or law. Thus, any back pay and benefits awarded between the termination and the Board's October 23, 1998 Order decision should be reimbursed to Respondent. Such a ruling is consistent with Board policy, authority, and precedent. Had the circumstances been reversed, i.e., the Board having granted a stay initially to Respondent, the Court of Appeals having upheld the Board, and Complainant sought back pay and benefits, then Complainant would surely be entitled to such an award. In this matter, Complainant's arguments are simply not persuasive. No persuasive authority was provided demonstrating in an employer-employee dispute involving termination that the losing party should be entitled to receive a remedy such as to create a windfall to that party.

CMHIP made a decision to place Complainant on leave with pay while awaiting mandate. It could have also decided to keep Complainant at work until mandate issued. As a result, the Board finds that Respondent is not entitled to reimbursement of \$16,320.

This order represents the affirmative vote of the following Board members:

Ms. Hoffman, Ms. Daly, Ms. Lottner, and Ms. Snowden.

Dated this day of July, 2000.	
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Joy Hoffman
Board Chair
State Personnel Board
1120 Lincoln Street, Suite 1420
Denver, CO 80203

NOTICE OF APPEAL

Each party has the following rights:

1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4106(11), C.R.S. (1999), as provided in Section 24-50-125.4(3), C.R.S. (1999).

In the event the decision is appealed, the Board requests that a copy of the Notice of Appeal filed with the Court of Appeals also be filed with the State Personnel Board at: 1120 Lincoln Street, Suite 1420, Denver, CO 80203. Such will aide in the timely preparation of the record.

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 2000, I placed true copies of the foregoing ORDER OF THE STATE PERSONNEL BOARD AND APPEAL RIGHTS, in the United States mail, postage prepaid, addressed as follows:

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